

MONTANA LEGISLATIVE HISTORY

Chapter 420 1999

Bill H 58 S _____

Original bill & history ☒ C

H. Committee on Natural Resources

S. Committee on Natural Resources

Hearing Date(s) _____ C

Hearing Date(s) _____ C

1/13 ☒ C

3/8 ☒ C

_____ C

_____ C

_____ C

_____ C

Date Out _____ C

out: 3/8 ☒

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendant information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HOUSE BILLS AND RESOLUTIONS

339

4/15	Free Conference Committee Appointed		
4/16	Hearing		
4/19	Free Conference Committee Report Received		
4/20	2nd Reading Free Conference Committee Report Adopted	87	11
4/21	3rd Reading Free Conference Committee Report Adopted	88	12
	Senate		
4/16	Free Conference Committee Appointed		
4/19	Free Conference Committee Report Received		
4/19	2nd Reading Free Conference Committee Report Adopted	50	0
4/20	3rd Reading Free Conference Committee Report Adopted	44	6
4/21	Sent to Enrolling		
4/22	Returned from Enrolling		
4/22	Signed by Speaker		
4/23	Signed by President		
4/26	Transmitted to Governor		
5/05	Signed by Governor		
5/07	Chapter Number Assigned		
	Chapter Number 560		
	Effective Date: 7/01/2000 - All Sections		

HB 58 Introduced by Younkin

LC0201 Drafter: Everts

Modify the Eligibility Requirements for Reimbursement from the Petroleum Tank Release Cleanup Fund;...

By Request of Petroleum Tank Release Compensation Board

12/04	Introduced		
12/21	Referred to Natural Resources		
1/04	1st Reading		
1/13	Hearing		
1/18	Committee Executive Action--Bill Passed	16	0
1/18	Committee Report--Bill Passed		
1/22	2nd Reading Passed	99	0
1/23	3rd Reading Passed	100	0
	Transmitted to Senate		
1/27	Referred to Natural Resources		
3/08	Hearing		
3/11	Committee Executive Action--Bill Concurred as Amended	10	1
3/11	Committee Report--Bill Concurred as Amended		
3/13	2nd Reading Concurred	43	0
3/15	3rd Reading Concurred	49	0
	Returned to House with Amendments		
4/09	2nd Reading Senate Amendments Concurred	96	2
4/10	3rd Reading Passed as Amended by Senate	96	3
4/10	Sent to Enrolling		
4/12	Returned from Enrolling		
4/13	Signed by Speaker		
4/14	Signed by President		
4/15	Transmitted to Governor		
4/23	Signed by Governor		
4/23	Chapter Number Assigned		
	Chapter Number 420		
	Effective Date: 4/23/1999 - All Sections		

HOUSE BILL NO. 58

INTRODUCED BY YOUNKIN C

BY REQUEST OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE ELIGIBILITY REQUIREMENTS FOR REIMBURSEMENT FROM THE PETROLEUM TANK RELEASE CLEANUP FUND; AMENDING SECTIONS 75-11-302 AND 75-11-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-11-302, MCA, is amended to read:

"75-11-302. Definitions. Except as provided in subsections (2), (15), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and

who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(10) "Eligible costs" means expenses reimbursable under 75-11-307.

(11) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used

in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) (a) "Owner" means:

(i) a person ~~who~~ that holds title to, controls, or possesses an interest in a petroleum storage tank; or

(ii) a person that owns the property on which a petroleum storage tank from which a release occurred was located.

(b) The term does not include a person ~~who~~ that holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

(d) aboveground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:

- 1 (i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);
2 (ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and
3 (iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and
4 (22)(d)(ii), if the facility is intrastate.

5 (23) "Property damage" means:

- 6 (a) physical injury to tangible property, including loss of use of that property caused by the injury;
7 or
8 (b) loss of use of tangible property that is not physically injured.

9 (24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing
10 of petroleum or petroleum products from a petroleum storage tank into ground water, surface water,
11 surface soils, or subsurface soils.

12 (25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another
13 volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid
14 petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad
15 or a federal defense fuel supply center."

16
17 Section 2. Section 75-11-308, MCA, is amended to read:

18 "75-11-308. Eligibility. (1) An owner or operator is eligible for reimbursement for the applicable
19 percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a
20 petroleum storage tank only if:

- 21 (a) the release was discovered on or after April 13, 1989;
22 (b) the department is notified of the release in the manner and within the time provided by law
23 or rule;
24 (c) the department has been notified of the existence of the tank in the manner required by
25 department rule or has waived the requirement for notification;
26 (d) the release was an accidental release; and
27 (e) with the exception of the release, the operation and management of the tank complied with
28 applicable state and federal laws and rules that the board determines pertain to prevention and mitigation
29 of petroleum releases when the release occurred was discovered and remained in compliance following
30 detection discovery of the release; and

1 (f) the owner or operator undertakes corrective action to respond to the release and the corrective
2 action is undertaken continuously from the time of discovery until the release is resolved.

3 (2) An owner or operator is not eligible for reimbursement from the petroleum tank release
4 cleanup fund for expenses caused by releases from the following petroleum storage tanks:

5 (a) a tank located at a refinery or a terminal of a refiner;

6 (b) a tank located at an oil and gas production facility;

7 (c) a tank that is or was previously under the ownership or control of a railroad;

8 (d) a tank belonging to the federal government;

9 (e) a tank owned or operated by a person who has been convicted of a substantial violation of
10 state or federal law or rule that relates to the installation, operation, or management of petroleum storage
11 tanks; or

12 (f) a mobile storage tank used to transport petroleum or petroleum products from one location
13 to another."

14
15 NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that
16 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
17 act].

18
19 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

20
21 NEW SECTION. Section 5. Applicability. [Section 2] applies to claims for reimbursement initially
22 filed with the petroleum tank release compensation board on or after [the effective date of this act].

23 - END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Rep. Bill Tash, on January 13, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Doug Wagner (R)

Members Excused: Rep. Carley Tuss (D)

Members Absent: Rep. Scott J Orr (R)

Staff Present: Kathleen Williams, Legislative Branch
Kimberly Walkenhorst, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB205, HB96, HB58, 1/13/1999

HEARING ON HB96

Opening Statement by Sponsor: Rep. Larry Grinde EXHIBIT(1)
{Tape : 1; Side : A; Approx. Time Counter : 0.8 - 2.9}

Proponents' Testimony:

Bud Clinch, Director Of Department of Natural Resources and Conservation (DNRC).

{Tape : 1; Side : A; Approx. Time Counter : 3.1 - 5.7}

Clive Rooney, DNRC

{Tape : 1; Side : A; Approx. Time Counter : 8.6}

Opponents: None

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 6.1}

Closing by Sponsor: Rep. Larry Grinde

{Tape : 1; Side : B; Approx. Time Counter : 2.9 - 4.9}

HEARING ON HB58

Opening Statement by Sponsor: Rep. Cindy Younkin

{Tape : 1; Side : B; Approx. Time Counter : 5.1}

Proponents' Testimony:

Mark Simonich, Department of Environmental Equality
(DEQ) EXHIBIT(2)

{Tape : 1; Side : B; Approx. Time Counter : 7.7}

Ronna Alexander, Montana Petroleum

{Tape : 1; Side : B; Approx. Time Counter : 19.2}

Opponents: None

Informational Testimony:

Jim Hill, DEQ

{Tape : 2; Side : A; Approx. Time Counter : 10.0}

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 22.2- Tape 2, Side B
3.6}

Closing by Sponsor: Rep. Cindy Younkin

{Tape : 2; Side : A; Approx. Time Counter : 3.7}

HEARING ON HB205

Opening Statement by Sponsor: Rep. Bill Tash

{Tape : 2; Side : B; Approx. Time Counter : 4.1}

Rep. Bill Tash moves to amend HB205. EXHIBIT(3)

{Tape : 2; Side : B; Approx. Time Counter : 8.9}

Proponents' Testimony:

Mike Murphy, Montana Water Resource Association

{Tape : 2; Side : B; Approx. Time Counter : 9.9}

John Baucus, Helena Valley Irrigation District EXHIBIT(4)

{Tape : 2; Side : B; Approx. Time Counter : 12.9 - 15.5}

Steve Snezek, Montana Association of Realtors

{Tape : 2; Side : B; Approx. Time Counter : 15.6 - 16.2}

Ed Everaert, Greenfields Irrigation District

{Tape : 2; Side : B; Approx. Time Counter : 16.4 - 19.1}

Lorna Karn, Montana Farm Bureau

{Tape : 2; Side : B; Approx. Time Counter : 19.7}

Jon Metropoulos, FJBC

{Tape : 2; Side : B; Approx. Time Counter : 21}

Jane Jelinski, MACO

{Tape : 2; Side : B; Approx. Time Counter : 23}

John Bloomquist

{Tape : 2; Side : B; Approx. Time Counter : 25.1}

Opponents: None

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 25.8}

Closing by Sponsor: Rep. Bill Tash

{Tape : 3; Side : A; Approx. Time Counter : 18.6}

EXECUTIVE ACTION ON HB58

Motion: Rep. Younkin moved HB58 DO PASS.

{Tape : 2; Side : A; Approx. Time Counter : 19.4}

Discussion:

Committee questioned Mark Simonich.

{Tape : 2; Side : A; Approx. Time Counter : 23.7}

Rep. Dan McGee had a question regarding the possibility of adopting an amendment to this bill.

{Tape : 2; Side : A; Approx. Time Counter : 26.8}

Vote: Motion carried 19-0. Reps. Bitney, Ohs, Story voted aye by proxy. Rep. Tuss abstained.

{Tape : 2; Side : B; Approx. Time Counter : 5.7}

Closing by Sponsor:

REPRESENTATIVE BOB RANEY, HD 26, LIVINGSTON, stated he was at a loss as to how to address the opponents of the issue mainly because the bill does not address free enterprise/private enterprise. It only addresses government agencies. This bill does not provide rule making so how could new rules be made as a result of this bill? This bill only tells state agencies the information that is to be made available to the public will now be made available electronically. The public has the right to know and that is all that he is asking to be done.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 37; Comments : None.}

HEARING ON HB 58

Sponsor: REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN

Proponents:

Mark Simonich, Director, Department of Environmental Quality
Ronna Alexander, Petroleum Marketers Association
Steve Wade, Burlington Northern and Santa Fe Railway Co.

Opponents: None.

Opening Statement by Sponsor:

REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN, presented HB 58 which provides some simple but good modifications to the Petroleum Tank Release Compensation program. It clarifies the definition of an owner. The eligibility requirements for reimbursement will be met if the owner/operator was in compliance with all the rules at the time the release was discovered rather than at the time the release occurred. The new eligibility requirement is being added in the form of taking and continuing with corrective action until the release has been resolved. That will eliminate the possibility of reimbursement for the same work twice and will also encourage the continuation of a cleanup.

Proponents' Testimony:

Mark Simonich, Director, Department of Environmental Quality, spoke in support of the bill as per EXHIBIT(3).

Ronna Alexander, Petroleum Marketers Association, spoke in support of **HB 58**. This bill will give the Board the ability to clarify in rule what compliance issues will actually be looked at for eligibility to the petroleum fund. This should speed up the claims process and the whole procedure. They encourage the committee's support.

Steve Wade, Burlington Northern and Santa Fe Railway Co., spoke in support of **HB 58**. He presented an amendment for further clarification on page 5, line 7 of the bill. **EXHIBIT(4)**. At the time the fund was created it was not anticipated there were those situations where a railroad owns property and leases it. If the person who leases that property installs and operates an underground storage tank and then abandons that property. The railroad is essentially left holding the bag. The amendment would allow the railroad recourse to the fund for cleanup in a situation where the lessee abandons the property. The railroad does not want reimbursement for the cleanup of their own fueling sites. They support the bill and hope the committee looks kindly on the amendment.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SENATOR COCCHIARELLA stated the amendment is somewhat objectionable and feels it is BN's responsibility to deal with their renter as the property owner. Why do they feel they should now get a better deal when they made a deal up front not to pay?

Mr. Wade stated initially the tax was imposed upon the railroad petroleum products. However, they did not want this fund used for multi-million dollar cleanups in Livingston, Havre, Missoula, and Whitefish fueling facilities. Most of the leases in question were entered into 50+ years ago and in most situations releases from underground storage tanks are not evident until the tanks are removed after the lessee has long left. These properties are scattered throughout Montana and the railroad does not have the ability to monitor every site they own and lease out to determine if there are leaking underground storage tanks. Most leases were executed long before the program started when it could be anticipated that business had insurance. That insurance was replaced in 1989 with this fund. They do not want to be in the business of suing someone's estate for reimbursement of the cleanup.

SENATOR COCCHIARELLA asked the financial status of this fund?

Mr. Simonich stated as of the end of February there was about \$3 million in the fund. **SEN. COCCHIARELLA** questioned if the Department know the number of sites? **Mr. Simonich** stated no they

did not. They could offer a list of the known sites but it would be difficult to estimate the number of potential sites.

SEN. COCCHIARELLA asked the impact of the amendment to the financial status of the fund? **Mr. Simonich** stated the amendment would draw additional payments from the fund. The tax which feeds the fund is in place and he is not aware of legislation to make that tax go away. The Board did not discuss the amendment but he offered it seems to be the fair thing to do. A great deal of money can be spent in litigation and many years go by before cleanup may be done. Perhaps if the railroads have better assurance they will be reimbursed for cleanup, they can get the cleanup done quicker and not spend time and money in Court.

SENATOR GROSFIELD asked for an example of this kind of site, i.e. a gas station within the city limits that was using some railroad land? **Mr. Wade** stated that was exactly what they are talking about. They have two sites right now that fit this situation.

SENATOR MAHLUM asked for clarification of the amount of money in the fund? **Mr. Simonich** said in his testimony he stated in the ten years the fund has been in place, through December, 1998, the Board has paid out or reimbursed \$33,277,404.11. There is \$3 million currently in the fund. **SEN. MAHLUM** asked if he was a small petroleum dealer that discovered a release but could not afford to do the \$50,000 cleanup, would the fund pay for cleanup? **Mr. Simonich** stated not normally. When a release is discovered the Department works with the owner on a corrective action plan. The owner does the work and submits their claims and receipts to the Board for reimbursement. Where a tank owner simply cannot afford to do the work, the Department will step in at some point to do the work and do it under 'trust', which are federal dollars matched with state money to do that cleanup. There is an understanding they will eventually recover whatever dollars they can from the tank owner. **SEN. MAHLUM** questioned if the tank owner paid the \$50,000 up front, would he be reimbursed the full \$50,000? **Mr. Simonich** stated the owner has to pay one-half of the first \$35,000, so \$17,500 comes out of the owner's pocket of the \$50,000.

SENATOR GROSFIELD questioned what does continuously mean on page 5, lines 1 and 2? **Mr. Simonich** stated there could be a variety of types of corrective action that might be put into place at a facility that has had leaks. There could be ongoing or continuous treatment necessary in some cases because the contaminant may have gotten into an area that cannot be dug out or into the groundwater. **SEN. GROSFIELD** stated concern on the phrasing of the sentence because this will go into the law book. He wonders if there is a way to change "continuously" to provide flexibility in the event there is an unintended break in the

corrective action. **Mr. Simonich** stated the House had the same concern. No one came up with adequate wording for an amendment but they would not be opposed to an amendment.

Closing by Sponsor:

REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN, stated the rationale behind the amendment proposed by BN is that if it is a non-railroad operation, the petroleum products in those tanks are going to be subject to the 3/4 cent tax. They are contributing to the cleanup fund and should be able to benefit from the cleanup. She does not have a particular position on the amendment and will leave that to the committee's learned council. She requested the committee's support of the bill.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 36.5; Comments : None.}

Motion/Vote: SEN. COLE moved that HB 58 BE CONCURRED IN AS AMENDED. Motion carried 10-1 with Mahlum voting no. SENATOR COLE will carry bill to Senate floor.

EXECUTIVE ACTION ON HB 142

Motion: SEN. KEATING moved that HB 142 BE CONCURRED IN.

Motion: SEN. WILSON moved that HB 142 AMENDMENTS HB014201.ALM BE ADOPTED. EXHIBIT(10).

Discussion:

SENATOR WILSON discussed the proposed amendment as per (EXHIBIT 10). His reasoning for proposing the amendment is he feels the rules are being changed in mid-stream. There are several people that participated in Environmental Assessments and Environmental Impact Statements and testified in good faith. He feels it is unfair they be cut out with this bill at this time. The amendment would eliminate the retroactive applicability provision of the bill.

SENATOR KEATING questioned the effects of the amendment. Tom Butler, Legal Counsel, Department of Environmental Quality, stated he felt the amendment was accurately described in that it would remove the retroactive applicability portion of the bill. The issue preclusion and evidentiary preclusion portions of the bill would not kick in until after passage and approval of HB 142. SENATOR KEATING questioned why was the retroactive applicability put into the bill in the first place? Mr. Butler stated it was added for various MEPA review documents being prepared under this interpretation of the bill and if there is no retroactivity clause, they have to go back and supplement some of the environmental reviews.

SENATOR COLE questioned if he had reviewed this amendment? Mr. Simonich stated he saw the amendment about 30 minutes ago. He believed SEN. WILSON explained the scope of the amendments. He clarified that any individual involved in the MEPA process so far with good intent would not be precluded from being involved. The intent of the issues involved is for new evidence and new issues. If they have already been involved, they are in. SEN. COLE stated if they are already included he is wondering if the amendments are needed and if they would be beneficial.

SENATOR GROSFIELD questioned if there was anything in particular he had in mind with the amendment? SEN. WILSON stated not

EXECUTIVE ACTION ON HB 331

Motion/Vote: SEN. KEATING moved that HB 331 BE CONCURRED IN. Motion carried 8-1 with Mahlum voting no. SENATOR ROUSH will carry bill to Senate floor.

EXECUTIVE ACTION ON HB 346

After discussion by the committee, it was decided to wait to do executive action on this bill until next week.

{Tape : 1; Side : B; Approx. Time Counter : 21.9 - 28.7; Comments : None.}

EXECUTIVE ACTION ON HB 58

Motion: SEN. COLE moved that HB 58 BE CONCURRED IN.

Motion: SEN. GROSFIELD moved that HB 58 AMENDMENTS HB005801.ALM BE ADOPTED. EXHIBIT(8).

Discussion:

SENATOR COCCHIARELLA stated she holds the same concern as she did in the hearing that a private property owner shares some responsibility of the cleanup of an underground storage tank. If this amendment is added does that mean Burlington Northern is completely off the hook for any share of the responsibility of that cleanup? Mr. Mitchell stated not totally as they would still be subject to the cost reimbursement, the half of the first \$35,000 of remediation like any private tank owner would be.

Vote: Motion that AMENDMENTS HB005801.ALM BE ADOPTED carried 10-0.

{Tape : 1; Side : B; Approx. Time Counter : 28.7 - 40; Comments : None.}

Motion: SEN. GROSFIELD moved that HB 58 AMENDMENTS HB005802.ALM BE ADOPTED. EXHIBIT(9).

Vote: Motion that AMENDMENTS HB005802.ALM BE ADOPTED carried 11-0.

**TESTIMONY OF MARK SIMONICH
ON BEHALF OF
THE PETROLEUM TANK RELEASE COMPENSATION BOARD
ON
HOUSE BILL 58**

March 8, 1999

Introduction

My name is Mark Simonich. I am the Director of the Department of Environmental Quality and am here today on behalf of the Petroleum Tank Release Compensation Board (PTRCB).

The PTRCB is a seven member board consisting of five members appointed by the Governor, the State Fire Marshall, and the Director of the DEQ. The board has authorized me to represent it during this legislative session. HB 58 was introduced at the request of the PTRCB to clarify some areas of the statute that, increasingly, are becoming contentious and confusing for both the board and owners and operators that seek reimbursement from the board.

The PTRCB was established by the legislature in 1989. The purposes of the PTRCB are to: protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases; provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages from petroleum storage tanks; assist certain tank owners and operators in meeting financial assurance requirements under state and federal law governing releases for petroleum storage tanks; and provide tank owners with incentives to improve petroleum storage tank facilities in order to minimize the likelihood of accidental releases.

The fund is funded through a 3/4 of a cent per gallon tax on all fuel that is sold in Montana. As of December 31, 1998, the PTRCB has reimbursed 865 facilities \$33,277,404.11 in connection with 918 separate releases.

Background

Owners, as defined in 75-11-302, may be reimbursed for cleanup costs resulting from leaks, or releases from their underground tanks. The statute requires that in order to be eligible for reimbursement from the fund certain conditions must be met. Those conditions include: (a) the release was discovered on or after April 13, 1989; (b) the department is notified in a manner and within the time provided by law or rule; (c) the department has been notified of the existence of the tank in the manner provided by department rule or has waived the requirement for notification; (d) the release was accidental; and (e) **with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules when the release occurred and remained in compliance following detection of the release.**

House Bill 58

This bill is intended to amend and clarify three components within this statute.

Section 1. Definitions.

The board would like to amend the definition of "owner" to include a person that owns the property on which a petroleum storage tank from which a release occurred was located. The amended language would allow a subsequent property owner to receive reimbursement for corrective action expenditures. Currently, if the tanks were removed at a release site and the site is sold, the new property owner cannot receive reimbursement of expenditures they incur for corrective action. The current definition causes concern that as property changes hands, corrective action may be slowed or stopped completely, because the new owner may not have sufficient financial means to carry the cost of the cleanup and won't be eligible for reimbursement under the fund. The proposed change will allow cleanup to continue and the owner to be reimbursed for his or her costs.

Section 2. Eligibility.

As I indicated earlier, an owner may be reimbursed if he or she meets certain conditions. When these conditions are met, the release will be deemed eligible for reimbursement. Three changes are being proposed here. The first change is to further clarify that the federal and state laws and rules that must be complied with are ones the PTRCB determines pertain to prevention and mitigation of petroleum releases. The current language of the law could be interpreted to include virtually every law and rule on the books. We do not believe that was the intent of the legislature. The PTRCB itself only looks at compliance with laws and rules relating directly to petroleum storage facilities administered by the DEQ, the State Fire Marshals office, and the U.S. EPA. Even this interpretation is broader than what the PTRCB believes is reasonably necessary. The state Fire Code includes such requirements as having tanks labeled in a certain manner, fire extinguishers in place, and fences located at prescribed distances, none of which have any particular effect on the ability to prevent or mitigate a petroleum release. There are also areas where EPA requirements are at odds with state DEQ requirements. For example, DEQ requires that records relating to inventory control be available within 48 hours of a department inspection. However, EPA requires that these same records be immediately available on site during an EPA inspection. This causes confusion for the board as to which to look at in determining eligibility. The proposed change to the statute would allow the PTRCB to clearly identify which state and federal laws and rules must be met in order to be eligible for reimbursement.

The second change is to clarify, for eligibility purposes, that compliance will be determined at the point which a release is discovered. Currently the statute bases eligibility on compliance when the release occurred. However, given these are underground tanks, it is virtually impossible to determine when a release occurred. In fact, many releases occur over several years. Because of this, the board has, in practice, interpreted the term "occurred" as meaning when the release was detected. The proposed change will allow the PTRCB to have a definitive point in time by which to gauge compliance.

The third change is to add, as a condition of eligibility, that owners or operators must continue corrective action. Once a release has been deemed eligible for reimbursement we want to assure that work will continue through to completion. Delays or starting and stopping of corrective actions only serves to hamper the effectiveness of the corrective action as well as running up the overall costs of the cleanup.

Section 3. Saving Clause. New Section

This insures that the adoption of the changes being proposed in this bill do not affect other proceedings that were begun with the PTRCB prior to the effective date of this act.

Section 4. Effective Date. New Section

This bill would become effective on passage and approval. The PTRCB meets approximately every eight weeks. The sooner this bill becomes effective the sooner the board as well as tank owners will receive the clarification they are looking for.

Section 5. Applicability. New Section

This indicates that the changes in section 2 apply to claims for reimbursement initially filed with the PTRCB on or after the effective date of this bill.

PROPOSED AMENDMENT TO HB 58

1. Amending 75-11-308(2)
Page 5, Line 7.

*After "control of a railroad" **STRIKE** "," and **INSERT** ", except for those tanks that were operated by a lessee of a railroad in the course of non-railroad operations;"*